1578/6109

THE.

TRIAL

OF

JAMES MONTGOMERY

FOR

A LIBEL

ON THE WAR,

By Reprinting and Republiſhing a Song originally Printed and Publiſhed long before the War begun;

AT

DONCASTER SESSIONS,

January 22, 1795.

SHEFFIELD:
PRINTED BY J. MONTGOMERY.

1795.

DEC

COPY OF AN INDICTMENT

FOR

A LIBEL,

Preferred at Sheffield Michaelmas Seſſions, 1794.

THE KING *v.* JAMES MONTGOMERY.

Weſt Riding of Yorkſhire. } THE Jurors for our Lord the King, upon their oath, preſent, That, before and at the time of the printing and publiſhing of the ſeveral falſe, ſcandalous, malicious and ſeditious Libels herein after-mentioned, a war was publicly depending between our Sovereign Lord George the Third, by the Grace of God, King of Great Britain, and ſo forth, and the Perſons then exerciſing the Government of France, to wit, at Sheffield, in the Weſt Riding of the ſaid County of York.

And the Jurors aforeſaid, upon their oath aforeſaid, do further preſent, That James Montgomery, late of Sheffield aforeſaid, in the Riding and County aforeſaid, Printer, being a wicked, malicious, ſeditious, and evil diſpoſed perſon, and well knowing the premiſes, but wickedly, maliciouſly, and ſeditiouſly contriving, deviſing, and intending to ſtir up and excite diſcontent and ſe-

dition among his Majeſty's ſubjects, and to alienate and withdraw the affection, fidelity, and allegiance of his ſaid Majeſty's ſubjects from his ſaid Majeſty, and unlawfully and wickedly to ſeduce and encourage his ſaid Majeſty's ſubjects to reſiſt and oppoſe his ſaid Majeſty's Government and the ſaid War, on the 16th day of Auguſt, in the thirty-fourth year of the reign of our ſaid Lord the now King, with force and arms at Sheffield aforeſaid, in the Riding and County aforeſaid, unlawfully, wickedly, maliciouſly, and ſeditiouſly did print and publiſh, and cauſe and procure to be printed and publiſhed, a certain falſe, ſcandalous, malicious and ſeditious Libel, of and concerning the ſaid War, and his ſaid Majeſty's conduct thereof, entitled, "*A Patriotic Song by a Clergyman of Belfaſt:*" In which ſaid falſe, ſcandalous, malicious, and ſeditious Libel, is contained (amongſt other things) as follows (that is to ſay,) "*Europe's fate on the conteſt's deciſion depends*" (meaning thereby that the fate of Europe depended on the deciſion of the ſaid War) "*Moſt important its iſſue will be; For ſhould France be ſubdued, Europe's liberty ends,*" (meaning thereby that if the Country of France ſhould be ſubdued in the courſe of the ſaid War, the Liberty of Europe would thereby be ended) "*If ſhe*" (meaning the country of France) "*triumphs*" (meaning in the courſe of the ſaid War) "*the World will be free*" —with intent to degrade, vilify, and traduce our

ſaid

ſaid Lord the King and his Government of this realm, and his conduct reſpecting the ſaid War, in contempt of our ſaid Lord the King and his Laws, to the evil and pernicious example of all others in the like caſe offending, and againſt the peace of our ſaid Lord the King, his Crown, and Dignity.

And the Jurors aforeſaid, upon their oath aforeſaid, do further preſent, That the ſaid James Montgomery, being ſuch perſon as aforeſaid, afterwards and whilſt ſuch war was depending as aforeſaid, to wit, on the day and year aforeſaid, at Sheffield aforeſaid, in the Riding and County aforeſaid, well knowing the premiſes aforeſaid, but deviſing and contriving as aforeſaid, unlawfully, wickedly, maliciouſly and ſeditiouſly did publiſh, and cauſe to be publiſhed, a certain other falſe, ſcandalous, malicious and ſeditious Libel, of and concerning his ſaid Majeſty's Government, and of and concerning the ſaid war, and his ſaid Majeſty's conduct thereof, entitled, "*A Patriotic Song by a Clergyman of Belfaſt:*" In which ſaid falſe, ſcandalous, malicious, and ſeditious Libel laſt mentioned, is contained (amongſt other things) as follows (that is to ſay,) "*Europe's fate on the conteſt's deciſion depends,*" (meaning thereby that the fate of Europe depended on the deciſion of the ſaid war) "*Moſt important its iſſue will be; For ſhould France be ſubdued Europe's Liberty ends,*" (meaning thereby that if the country of France

ſhould be ſubdued in the courſe of the ſaid war, the Liberty of Europe would thereby be ended) "*If ſhe*" (meaning the country of France) "*triumphs*" (meaning in the courſe of the ſaid war) "*the World will be free*—with intent to degrade, vilify, and traduce our ſaid Lord the King and his Government of this realm, and his conduct reſpecting the ſaid war, in contempt of our ſaid Lord the King and his Laws, to the evil and pernicious example of all others in the like caſe offending, and againſt the peace of our ſaid Lord the King, his Crown, and Dignity.

And the Jurors aforeſaid, upon their oath aforeſaid, do further preſent, That the ſaid James Montgomery, being ſuch perſon as aforeſaid, afterwards and whilſt ſuch war was depending as aforeſaid, to wit, on the day and year aforeſaid, at Sheffield aforeſaid, in the Riding and County aforeſaid, well knowing the premiſes aforeſaid, but contriving and deviſing as aforeſaid, unlawfully, wickedly, maliciouſly and ſeditiouſly did print and publiſh, and cauſe to be printed and publiſhed, a certain other falſe, ſcandalous, ſeditious, and malicious Libel, of and concerning his ſaid Majeſty's Government, and of and concerning the ſaid war and his ſaid Majeſty's conduct thereof, entitled, "*A Patriotic Song by a Clergyman of Belfaſt:*" In which ſaid falſe, ſcandalous, malicious, and ſeditious Libel laſt mentioned, is contained (amongſt other things) as follows (tha

is to ſay,) " *Europe's fate on the conteſt's deciſion depends, Moſt important its iſſue will be; For ſhould France be ſubdued Europe's Liberty ends, If ſhe triumphs the World will be free*"—with intent to degrade, vilify, and traduce our ſaid Lord the King and his Government of this realm, and his conduct reſpecting the ſaid war.

And the Jurors aforeſaid, upon their oath aforeſaid, do further preſent, That the ſaid James Montgomery, being ſuch perſon as aforeſaid, afterwards and whilſt ſuch war was depending as aforeſaid, to wit, on the day and year aforeſaid, at Sheffield aforeſaid, well knowing the premiſes aforeſaid, but contriving and adviſing as aforeſaid, unlawfully, wickedly, maliciouſly and ſeditiouſly did publiſh, and cauſe to be publiſhed, a certain other falſe, ſcandalous, ſeditious and malicious Libel, of and concerning his ſaid Majeſty's Government, and of and concerning the ſaid war, and his ſaid Majeſty's conduct thereof, entitled, " *A Patriotic Song by a Clergyman of Belfaſt:*" In which ſaid falſe, ſcandalous, malicious, and ſeditious Libel, laſt mentioned, is contained (amongſt other things) as follows that is to ſay,) " *Europe's fate on the conteſt's deciſion depends, Moſt important its iſſue will be; For ſhould France be ſubdued Europe's Liberty ends, If ſhe triumphs the World will be free*"—with intent to degrade, vilify, and traduce our ſaid Lord the King and his Government of this realm, and his conduct reſpecting the ſaid war.

TRIAL

TRIAL

OF

JAMES MONTGOMERY

FOR

A LIBEL.

MR. HILL opened the Indictment.

Mr. Tooker then roſe, and addreſſed the Jury in a ſpeech of conſiderable length. He ſaid that, at the time of the publication of the words indicted as libellous, a war exiſted between the King of Great Britain and the Perſons exerciſing the Government of France. But it was the province of the Jury to decide, whether the paſſage were a libel or not; it was for them to ſay, whether in the fate of Europe, which the ſong aſſerted depended on the deciſion of the preſent conteſt, was included the fate of Great Britain. If ſo, the words were a moſt groſs and palpable libel, becauſe they tended to render the people diſcontented with his Majeſty's government, with the war, and the conduct of it. The war was juſt and neceſſary; —juſt, becauſe the French were the aggreſſors, and

and neceſſary, becauſe had they been ſuffered quietly to extend their conqueſts, and propagate their principles, the liberties of Europe and this Country would indeed have been ended. Much pains, he obſerved, had been taken for ſome time paſt to circulate libellous and ſeditious publications amongſt the people of Sheffield, which tended to inflame their minds, and to render them diſſatisfied with the happy form of Government under which we live. In theſe publications the people were taught to believe that the Repreſentation in Parliament was corrupt and venal; that the Laws were oppreſſive; and that, inſtead of living under a mild and equitable ſyſtem of legiſlation, they groaned under the yoke of deſpotic and practical tyranny. The learned Counſel ſaid, that theſe things had been too long ſuffered to iſſue with impunity from that quarter, whence the libel they were met to try proceeded.

He then was going into a detail of the conduct of Mr. Gales, the principles preached up in the Sheffield Regiſter, &c. when he was interrupted by *Mr. Vaughan*, who contended, that his client had nothing to do with Mr. Gales and his principles; he was called upon to anſwer for an action charged home to himſelf, and nothing which Mr. Gales had ever printed or done could poſſibly apply to him. The manner, therefore, in which the learned Counſel was enlarging upon Mr. Gales's concerns was improper, becauſe not only irrelevant,

irrelevant, but becauſe it tended to prejudice the minds of the Jury againſt his client, who had lived with Mr. Gales for a conſiderable time, but neither could nor ought to be implicated in any thing which the learned Gentleman had to lay to the charge of Mr. Gales.

Mr. Tooker ſaid, all he meant by introducing Mr. Gales was to prove that the defendant had lived and been connected with him. He then detailed what afterwards was for the moſt part confirmed in Jordan's examination reſpecting the manner and circumſtances in which the ſong containing the libel had been publiſhed. Jordan was a perſon whoſe buſineſs it was to ſell ſongs; and though he had been taken up and committed to the Houſe of Correction, yet the defendant, conſidering his ſituation in life, was the fitteſt perſon of the two to be proſecuted. He then endeavoured, at conſiderable length, to prove that the words of the libel were evidently, as ſtated in the indictment, "of and concerning the preſent war:" for the object of the war was to ſubdue and conquer France if we can; otherwiſe France would ſubdue and conquer us. The learned Counſel, during the courſe of his ſpeech, enlarged much upon the horrors, cruelties, and anarchy of the French Revolution, and contraſted them with the happy and free Conſtitution under which we live, where every man's life, liberty, property and reputation are ſecured by law. In ſpeaking of the Liberty of the Preſs, the learned Counſel

ſaid,

ſaid, the Liberty of the Preſs is a liberty to print what men ſhall think fit to print at their peril.—He made ſome remarks pointed againſt the conduct of the popular Aſſociations, which had lately been formed in different parts of the country, under a pretence of purſuing the object of a Parliamentary Reform—Aſſociations which had probably, however, a different end in view and which before were unknown in this kingdom.

JOSEPH JORDAN

Was then called, and examined by Mr. Buck.—He ſaid, that in the month of Auguſt laſt, as he was crying "Song-Books" in the Hartſhead, Sheffield, he had been called into the office of the defendant by one of the workmen, whom he had formerly known as an apprentice in the office of Mr. Trimmer, of Derby. The ſaid workman gave him twopence for a pint of ale; and, after ſome converſation, ſhewed him a printed Song;* no copies of which, he ſaid, had ever been ſold in Sheffield: Upon which, he (Jordan) aſked the men what they would print him a few quires for. They told him they could not print them without

---

* The letter-preſs of this Song was compoſed by an Apprentice of Mr. Gales, nearly two years ago, who printed it *clandeſtinely*, and gave copies to the men in the office. At the time I ſucceeded to the Buſineſs of Mr. Gales, this form was *ſtill ſtanding*, of which I was ignorant, till Jordan himſelf informed me, having learned that circumſtance from his converſation with the men.

J. Montgomery.

out their maſter's orders, and adviſed him to go down into the ſhop to the defendant. This he accordingly did: The defendant agreed to print him ſix quires at threepence per quire, and told him to call again the next morning, and they ſhould be ready. He did call, and ſaw the defendant again, who told him they had been very buſy in the office and could not get them done, but would endeavour to let him have ſome in the afternoon. The witneſs went away and did not return till twelve days after, when he ſaw the defendant again, and received one quire of the ſongs, for which he paid threepence. He afterwards received the remaining five quires at two ſeveral times, and paid the ſum of one ſhilling and ſixpence, and no more, for the whole ſix quires.—As he was *ſelling ſtraws* in the ſtreets, and *giving the ſong*, he was apprehended by Samuel Hall, the Conſtable, and, in vindication of himſelf, offered to point out the place where he got the ſong, which he did. Though he had heard the ſong read to him by the workman who called him into the office of the defendant, and though he had ſold ſtraws and given the ſong into the bargain, he did not think there was any harm in it. The defendant had not told him it was ſeditious, or he would not have ſold it, upon his oath he would not.——Upon his croſs-examination by Mr. Vaughan, he ſaid he had been a ſong-ſeller, not a ſong-ſinger, for many years, he believed upwards

of

of twenty years; during which time he had been taken up and committed to various Houſes of Correction, but never for ſedition. Being aſked, if any particular converſation had paſſed between himſelf and the defendant, reſpecting the Government or the War, he anſwered, "None at all:" the defendant had never mentioned any thing relative to either the government, the war, or any thing elſe, except the price and printing of the ſongs. Being aſked why, if he did not know the ſong was ſeditious, he had ſold ſtraws and given the ſong, he replied, becauſe he thought there was ſomething extraordinary in it, and he ſold the ſtraws to make people think there was ſo; but he poſitively ſwore that he did not know it was ſeditious, becauſe the defendant had not hinted any thing of the kind to him. He himſelf had applied to the defendant to print the ſong, after having learned of the men that the letter-preſs was ſtanding, which he told the defendant, and ſaid to him they only wanted *working off*, as the printers call it. The defendant only looked at the title of the ſong, but did not read it, nor ſay any thing reſpecting the contents. He had never ſeen the defendant before, nor did he know his name, but in court he perfectly recollected his perſon, and had deſcribed it to the conſtable who took him up. He had been in Wakefield Houſe of Correction ever ſince that time, except that he had been brought to Sheffield Seſſions, where he had turned informer,

former, and when the defendant was brought into a room in Samuel Hall's houſe, where he (Jordan) was ſitting, he had challenged his perſon.

SAMUEL HALL,

Upon his examination, ſwore That, in the month of Auguſt laſt, he ſaw Joſeph Jordan ſelling ſtraws before his houſe: He had bought a ſtraw of him, but complaining it was a dear one, Jordan had given him a ſong into the bargain, which he produced in Court, and identified upon oath. Caſting his eyes over it, and thinking there was ſedition in it, he apprehended Jordan, and told him he muſt go before a Magiſtrate. Jordan immediately, in exculpation of himſelf, offered to ſhew him the ſhop where he had bought the ſongs; which he did, and deſcribed the perſon of the defendant. He believed the defendant was a printer, and knew that the printing-office of Mr. Gales was formerly above the ſhop, pointed out to him by Jordan. He had ſeveral times ſeen the defendant in Mr. Gales's ſhop, having occaſionally paid bills, due on account of buſineſs to Mr. Gales, to the defendant, who he believed had been his ſhopman.

The evidence on the part of the profecution being cloſed, *Mr. Vaughan* roſe in behalf of the Defendant, and addreſſed the Jury in a moſt brilliant and animated ſpeech, which laſted about an hour and a half. This, he affirmed, was one of the moſt extraordinary cauſes that had ever been brought before a Court of Juſtice; and the Counſel for the profecution had attempted to ſupport it in as extraordinary a manner. Much had been ſaid upon ſubjects with which his client had not the ſlighteſt concern, and the introduction of which could have no other tendency than to produce an unfavourable impreſſion on the minds of the Jury, which the conduct of the perſon accuſed, when fairly and ſingly conſidered, was not, in the leaſt degree, calculated to excite. Since the learned Counſel, on the other ſide, had thought proper to introduce ſo much extraneous matter, it was natural to conclude that they were unable to bring forward any plain and direct evidence in proof of the charge which they had undertaken to ſupport. It is ſeldom that men chuſe a circuitous road when, with equal eaſe and convenience, they can proceed by a near and a ſtraight courſe. In the road which the learned Counſel had taken it was, however, his duty to follow; and if he ſhould be found to wander from the immediate buſineſs before the Court, it would only be with a view more cloſely to purſue the ſteps of his ingenious friend who had taken the lead on the

the other ſide of the queſtion, and to endeavour to remove from the minds of the Gentlemen of the Jury any unfavourable impreſſions which might poſſibly have been made upon them, but which he was very ſure a cool and candid examination of the character and conduct of his client would by no means juſtify.

Much had been ſaid, that day, upon the manifold bleſſings we enjoy under the happy Conſtitution of Great Britain, and much againſt the tyranny, the anarchy and miſeries of the French Nation ſince the Revolution. To the greateſt part of the former, and to ſome part of the latter obſervations, he moſt heartily ſubſcribed: But of all thoſe bleſſings, of which we juſtly boaſted in this country, certainly the Liberty of the Preſs and Trial by Jury were of the firſt conſequence, and of the moſt ineſtimable value. By the former, Engliſhmen were permitted to deliver their opinions freely upon every moral and political ſubject, and the Liberty of the Preſs, only under the equitable controul of law, was the guardian of all our other Liberties: The Trial by Jury was a privilege of no leſs magnitude and importance. By this admirable mode of diſpenſing juſtice, every Britiſh ſubject claimed the right to be judged by his peers. Juries in this country were choſen out of the moſt reſpectable and independent part of the community, the Freeholders of England; men, in general, of plain good ſenſe,

ſound underſtandings and virtuous principles:— Such a Jury, he truſted, were aſſembled that day to try and to judge his client.—Under the antient Deſpotiſm of France theſe two grand pillars of the Rights of Freemen, the Liberty of the Preſs and the Trial by Jury, were wanting to the wretched inhabitants of that unhappy country. The lives, the liberties and property of that people were under the abſolute controul of a race of tyrants, whoſe ambition was unbounded, whoſe cruelty was inſatiable, and whoſe rapacity knew no end. One of thoſe monſters, Louis XIV. with fleets and armies invaded the Liberties of this Country, yea, and of all Europe. When James II. the laſt of the execrable race of the Stuarts, was driven from the throne of theſe realms by his indignant ſubjects, and fled to ſeek protection in the Court of that Tyrant, Louis not only opened an aſylum to the guilty fugitive, not only lodged him in a palace and ſupported him in luxury, but raiſed a mighty army to aſſiſt him in regaining the throne from which he had been hurled, to make room for King William, our glorious deliverer, and the rightful Sovereign of the People becauſe the Sovereign of their choice. Years of bloody war followed, hundreds of battles were fought, thouſands of lives were loſt.— Not only the claim of James was ſupported by the Court of France, but his ſon, the Pretender, was furniſhed with arms and ſoldiers and treaſures,

to

to invade and to ſubdue the Liberties of this Country. The French, under the tyranny of their Kings, were too juſtly ſtyled the natural enemies of Great Britain; for review the page of hiſtory, and you will find, when and wherever an opportunity offered, they were always ready to injure, to inſult and to make war againſt us.—The horrors of Deſpotiſm meanwhile reigned from the eaſt to the weſt, from the north to the ſouth of France. All the people were ſlaves, and millions depended upon one—one, whoſe ſingle will was all men's miſery. The country groaned under a vaſt ſyſtem of feudal tyranny: An idle and a profligate Nobility covered the land like locuſts and devoured all the fruits of induſtry: Prieſts, perſecuting Prieſts, ſwarmed on every ſide, and the whole kingdom was one region of ſorrow and ſlavery. In illuſtration of theſe remarks, Mr. Vaughan read large Extracts from Mr. Arthur Young's Travels through France, during the years 1787, 1788 and 1789, which painted the miſeries of the people in the moſt affecting colours. From this ſenſible and well-informed Writer, ſaid he, we derive the following information; *ſee Chap. XXII. Firſt Edition.*

"The groſs infamy which attended *Lettres de Cachet* and
"the Baſtile, during the whole reign of Louis XV. made
"them eſteemed in England, by people not well informed,
"as the moſt prominent features of the Deſpotiſm of France.

 "They

" They were certainly carried to an exceſs hardly credible;
" to the length of being ſold with blanks, to be filled up with
" names at the pleaſure of the purchaſer; who was thus able,
" in the gratification of private revenge, to tear a man from
" the boſom of his family, and bury him in a dungeon,
" where he would exiſt forgotten, and die unknown!——
" An anecdote, which I have from an authority to be de-
" pended on, will explain the profligacy of Government in
" reſpect to theſe arbitrary impriſonments. Lord Albe-
" marle, when Ambaſſador in France, about the year 1753,
" negotiating the fixing of the limits of the American Co-
" lonies, which three years after produced the war, calling
" one day on the Miniſter for Foreign Affairss was intro-
" duced, for a few minutes, into his cabinet, while he fi-
" niſhed a ſhort converſation in the apartment, in which he
" uſually received thoſe who conferred with him. As his
" lordſhip walked backwards and forwards in a very ſmall
" room (a French Cabinet is never a large one) he could not
" help ſeeing a paper lying on the table, written in a large
" legible hand, and containing a liſt of the priſoners in the
" Baſtile, in which the firſt name was Gordon. When the
" Miniſter entered, Lord Albemarle apologiſed for his in-
" voluntarily remarking the paper; the other replied, that
" it was not of the leaſt conſequence, for they made no ſecret
" of the names. Lord Albemarle then ſaid that he had
" ſeen the name of Gordon firſt in the liſt, and he begged to
" know, as in all probability the perſon of this name was a
" Britiſh ſubject, on what account he had been put into the
" Baſtile. The Miniſter told him that he knew nothing
" of the matter, but would make the proper inquiries.—
" The next time he ſaw Lord Albemarle, he informed him
" that, on enquiring into the caſe of Gordon, he could find
" no perſon who could give him the leaſt information; on
" which he had had Gordon himſelf interrogated, who ſo-
" lemnly affirmed, that he had not the ſmalleſt knowledge,
" or even ſuſpicion, of the cauſe of his impriſonment, but

" that

" that he had been confined thirty years; however, added
" the Miniſter, I ordered him to be immediately releaſed,
" and he is now at large. Such a caſe wants no comment.

" The abuſes attending the levy of taxes were heavy and
" univerſal. The kingdom was parcelled into generalities,
" with an intendant at the head of each, into whoſe hands
" the whole power of the Crown was delegated for every
" thing, except the military authority; but particularly for
" all affairs of finance. The generalities were ſubdivided
" into elections, at the head of which was a *Sub-delegue*,
" appointed by the intendant. The rolls of the *Taille*, *Capi-*
" *tation*, *Vingtiemes* and other taxes were diſtributed
" among diſtricts, pariſhes and individuals, at the pleaſure
" of the intendant, who could exempt, change, add or di-
" miniſh, at pleaſure. Such an enormous power conſtantly
" acting, and from which no man was free, muſt, in the
" nature of things, degenerate, in many caſes, into abſo-
" lute tyranny. It muſt be obvious that the friends, ac-
" quaintances and dependents of the intendant and of all
" his *Sub delegues*, and the friends of theſe friends, to a
" long chain of dependence, might be favoured in taxation,
" at the expence of their miſerable neighbours; and that no-
" blemen in favour at Court, to whoſe protection the in-
" tendant himſelf would naturally look up, could find little
" difficulty in throwing much of the weight of their taxes on
" others, without a ſimilar ſupport. Inſtances, and even
" groſs ones, have been reported to me, in many parts of
" the kingdom, that made me ſhudder at the oppreſſion to
" which numbers muſt have been condemned, by the undue
" favours granted to ſuch crooked influence. But without
" recurring to ſuch caſes, What muſt have been the ſtate of
" the poor people paying heavy taxes, from which the No
" bility and Clergy were exempted? A cruel aggravation
" of their miſery, to ſee thoſe who could beſt afford to pay
" exempted becauſe able!

" The

" The inrolments for the militia, which the *Cahiers* call " *an injuſtice without example*, were another dreadful " ſcourge on the peaſantry; and, as married men were ex- " empted from it, occaſioned, in ſome degree, that miſ- " chievous population which brought beings into the world " in order for little elſe than to be ſtarved. The *corvees*, or " police of the roads, were annually the ruin of many hun- " dreds of farmers; more than three hundred were reduced " to beggary in filling up one vale in Loraine; all theſe op- " preſſions fell on the *tiers etat* (the third eſtate) only; the " Nobility and Clergy having been equally exempted from " *tailles*, militia and *corvees*. The penal code of finance " makes one ſhudder at the horrors of puniſhment inade- " quate to the crime. It is calculated by a writer (Recher- " ches et Conſid. par M. le Baron de Cormere, tom. 2. p. " 187.) very well informed on every ſubject of finance, " that, upon an average, there were annually taken up and " ſent to priſon or the gallies, men 2340, women 896, " children 201. Total 3437.

" All families and perſons liable to the *taille*, in the pro- " vinces of the Grandes Gabelles were inrolled, and their " conſumption of ſalt for the pot and ſalierie (that is the " daily conſumption, excluſive of ſalting meat, &c. &c.) " eſtimated at ſeven pounds a head per annum, which quan- " tity they were forced to buy whether they wanted it or " not, under the pain of various fines according to the caſe.

" The *Capitaineries* were a dreadful ſcourge on all the oc- " cupiers of land. By this term is to be underſtood the pa- " ramountſhip of certain diſtricts, granted by the King to " Princes of the blood, by which they were put in poſſeſ- " ſion of the property of all game, even on the lands not " belonging to them and, what is very ſingular, on manors " granted long before to individuals; ſo that the erecting of " a diſtrict into a *Capitainerie* was an alienation of all mane- " rial rights to game within it. This was a trifling buſi- " neſs in compariſon of other circumſtances; for, in ſpeak-

" ing

" ing of the preſervation of the game in theſe *Capitaineries*,
" it muſt be obſerved that by game muſt be underſtood whole
" droves of wild boars, and herds of deer not confined by
" any wall or pale, but wandering, at pleaſure, over the
" whole country, to the deſtruction of crops; and to the
" peopling of the gallies by the wretched peaſants, who pre-
" ſumed to kill them, in order to ſave that food which was
" to ſupport their helpleſs children. The game in the *Ca-*
" *pitainerie* of Monteeau, in four pariſhes only, did miſ-
" chief to the amount of 184,263 livres per annum. There
" were numerous edicts for preſerving the game, which
" prohibited weeding and hoeing, leſt the young partridges
" ſhould be diſturbed; ſteeping ſeed, leſt it ſhould injure
" the game; manuring with night ſoil, leſt the flavour of
" the partridges ſhould be injured by feeding on the corn ſo
" produced; mowing hay, &c. before a certain time, ſo
" late as to ſpoil many crops; and taking away the ſtubble,
" which would deprive the birds of ſhelter. Such were the
" exertions of arbitrary power which the lower orders felt
" directly from the royal authority; but, heavy as they
" were, it is a queſtion whether the others, ſuffered cir-
" cuitouſly through the Nobility and the Clergy, were not
" yet more oppreſſive? Nothing can exceed the complaints
" made in the *Cahiers* under this head. They ſpeak of the
" diſpenſation of juſtice in the Manerial Courts, as com-
" priſing every ſpecies of Deſpotiſm; the diſtricts indeter-
" minate—appeals endleſs—irreconcileable to liberty and
" proſperity—and irrevocably proſcribed in the opinion of
" the public—augmenting litigations—favouring every ſpe-
" cies of chicane—ruining the parties—not only by enor-
" mous expences on the moſt petty objects, but by a dread-
" ful loſs of time—the judges, commonly ignorant pre-
" tenders, who hold their courts in *Cabarets*, and are ab-
" ſolutely dependent on the Seigneurs. Nothing can ex-
" ceed the force of expreſſion uſed in painting the oppreſ-
" ſions of the Seigneurs, in conſequence of their feudal

" powers.

" powers. By one horrible law, the people are bound to
" grind their corn at the mill of the Seigneur only; to preſs
" their grapes at his preſs only, and to bake their bread in
" his oven; by which means the bread is often ſpoiled, and
" more eſpecially wine, ſince in Champagne thoſe grapes
" which, preſſed immediately, would make white wine,
" will, by waiting for the preſs, which often happens, make
" red wine only.

" They (the people) demand that the uſe of hand-mills
" be free; and hope that poſterity, if poſſible, may be igno-
" rant that feudal tyranny in Bretagne, armed with the ju-
" dicial power, has not bluſhed, even in theſe times, at
" breaking hand-mills, and at ſelling annually to the miſer-
" able the faculty of bruiſing between two ſtones a meaſure
" of buck-wheat or barley. The very terms of many of
" their complaints are unknown in England, and conſe-
" quently untranſlatable: They have probably ariſen long
" ſince the feudal ſyſtem ceaſed in this kingdom. What are
" theſe tortures of the peaſantry in Bretagne, which they
" call *Chevanches, quintaines, foule, ſaut de poiſon, baiſer*
" *de marriées; chanſons; tranſporte d' œuf ſur un chareite;*
" *ſilence des grenouilles*, &c. &c. This laſt is a curious ar-
" ticle: When the lady of the Seigneur lies in, the people
" are obliged to *beat the waters* in marſhy diſtricts to keep
" the frogs ſilent, that ſhe may not be diſturbed. This duty,
" a very oppreſſive one, is commuted into a pecuniary fine.

" In paſſing through many of the French provinces, I
" was ſtruck with the various and heavy complaints of the
" farmers and little proprietors, of the feudal grievances
" with the weight of which their induſtry was burthened;
" but I could not then conceive the multiplicity of the
" ſhackles which kept them poor and depreſſed. I under-
" ſtood it better afterwards from the converſation and com-
" plaints of ſome grand Seigneurs, as the Revolution advan-
" ced; and I then learned, that the principal rental of
" many eſtates conſiſted in ſervices and feudal tenures; by

" the

" the baneful influence of which the induſtry of the people
" was almoſt exterminated.

" It is impoſſible to juſtify the exceſſes of the people on
" their taking up arms; they were certainly guilty of cruel-
" ties, it is idle to deny the facts, for they have been proved
" too clearly to admit of a doubt: *But is it really the peo-*
" *ple to whom we are to impute the whole? or to their op-*
" *preſſors, who had kept them ſo long in a ſtate of bondage?*
" He who chuſes to be ſerved by ſlaves, and by ill-treated
" ſlaves, muſt know that he holds both his property and
" life by a tenure far different from thoſe who prefer the
" ſervice of well-treated freemen; and he who dines to the
" muſic of groaning ſufferers, muſt not, in the moment of
" inſurrection, complain that his daughters are raviſhed and
" then deſtroyed; and that his ſons throats are cut. When
" ſuch evils happen, they ſurely are more imputable to the
" tyranny of the maſter than to the cruelty of the ſervant.
" The analogy holds with the French peaſants: The mur-
" der of a Seigneur or a chateau in flames is recorded in
" every newſpaper. The rank of the perſon who ſuffers at-
" tracts notice: but where do we find the regiſter of that
" Seigneur's oppreſſions of his peaſantry and his exactions
" of feudal ſervices from thoſe whoſe children were dying
" around them for want of bread? Where do we find the
" minutes that aſſigned theſe ſtarving wretches to ſome vile
" pettifogger, to be fleeced by impoſitions, and a mockery
" of juſtice, in the Seigneural Courts? Who gives us the
" awards of the Intendant and his *ſub-delegues*, which took
" off the taxes of a man of faſhion, and laid them with ac-
" cumulated weight on the poor, who were ſo unfortunate
" as to be his neighbours? Who has dwelt ſufficiently
" upon explaining all the ramifications of deſpotiſm, regal,
" ariſtocratical and eccleſiaſtical, pervading the whole maſs
" of the people; reaching, like a circulating fluid, the moſt
" diſtant capillary tubes of poverty and wretchedneſs? In
" theſe caſes, the ſufferers are too ignoble to be known, and

" the

" the mass too indiscriminate to be pitied. But should a
" philosopher feel and reason thus? Should he mistake the
" cause for the effect? and, giving all his pity to the few,
" feel no compassion for the many, because they suffer in his
" eyes, not individually, but by millions? *

Mr. Vaughan then expatiated upon the various causes which had ripened into the Revolution of 1789, which had levelled the Bastile with the ground, and broke the yoke from the necks of twenty-five millions of men. It was at that time, and to celebrate that event, an event whereon all Europe looked with astonishment, that the song for which his client stood indicted was originally written, printed and published in various newspapers. To that event and the campaign of the Duke of Brunswick, the professed object of which was to " restore the old Empire in France," the words libelled must be applied. The Tyrants evidently alluded to in the song were the Emperor of Germany, the faithless King of Prussia and the Tygress of the North, who had just before cut and possessed themselves of a large slice of unhappy Poland. They viewed, with an eye and

* It is not certain that the above Extracts are, *word for word*, the same with those read by Mr. Vaughan in Court; but, if not precisely, they are very nearly so; and they are all faithfully copied from that part of Mr. Young's Travels from which Mr. Vaughan made his selections.

of fear and jealouſy, the progreſs of the firſt French Revolution and determined, and united accordingly, to cruſh it in its cradle. This was long, long before the war with England broke out; and yet this was the time when the ſong was written, and theſe, theſe alone, the circumſtances and perſons to which and to whom it applied.— Was it poſſible that a ſong, written many months before the exiſtence of the preſent war, could be a libel upon the war? Was it conſiſtent with any human idea of juſtice to ſtrain it thus? Nay, was it conſiſtent with common ſenſe? Viewed in their juſt relation to the parties and to the time to which, and which only, the words libelled in the indictment referred, Mr. Vaughan inſiſted that, as they were perfectly innocent and inoffenſive, ſo they expreſſed an opinion which, in his mind at leaſt, was well founded and which, had the Duke of Brunſwick been completely ſucceſsful, he was firmly perſuaded we ſhould have diſcovered, from fatal experience, to be too ſtrictly true. For, if all the power of France had been unhappily added to that already poſſeſſed by Auſtria and Pruſſia, where poſſibly could there have been any ſecurity for the continued independence of any other country in Europe? What is uſually termed the Balance of Power would certainly have been moſt completely deſtroyed; and feeble and ſhort lived muſt have been the reſiſtance which any other nation could then have made to this

mighty confederacy, ſtrengthened by ſuch a prodigious acceſſion of power and territory. Holland and the States of Italy muſt ſoon have been ſwallowed up. Spain and Portugal could not have hoped to have made any effectual oppoſition: And he firmly believed that this country itſelf would have been in the moſt imminent danger of falling a ſacrifice to the ambition of its neighbours. If it was ſedition to expreſs ſuch an opinion, it was a ſpecies of ſedition new to him, and of which he was ready to confeſs himſelf as guilty as his client. But the fact was, there was no ſedition, nor any thing at all like ſedition in the caſe. A man might entertain ſuch ſentiments as theſe, and be the firmeſt and trueſt friend of his country.—Theſe were his own ſentiments, and he was neither afraid nor aſhamed to declare them in the face of that Court, or in any other Court in the kingdom. Indeed, it was his earneſt wiſh to have this buſineſs carried before a ſuperior Tribunal.—Truth, Juſtice and Law were, he was confident, in favour of the innocent and amiable young man in behalf of whom he was then pleading; and, he truſted, the Jury would not permit their minds to be influenced by any prejudices againſt him. The ſentiment libelled in the indictment muſt be ſtrangely tortured before it could be conſtrued into ſedition. It was a ſentiment publiſhed by others beſides his client, to whom not the leaſt ſhadow of guilt had been imputed in conſequence

quence of it. That celebrated Touriſt, from whom he had already quoted ſo much, Mr. Arthur Young, had publicly declared himſelf of the very ſame opinion; and he was fond of appealing to his authority, becauſe it was an authority juſtly held in high eſtimation, ſince it was that of a man of a very intelligent and active mind, who had not borrowed his ſentiments from hearſay evidence, but who had formed them upon mature and diligent enquiry, and had travelled himſelf through the whole country of France in order to collect the moſt curious and important information. Mr. Vaughan ſaid, he would read to the Gentlemen of the Jury another Extract from Mr. Young's Work, from which they would learn that his client was not ſingular in the dreadful, ſhocking, horrid, tremendous crime which he was ſaid to have committed.

" Oil and vinegar—fire and water—Pruſſians and Auſ-
" trians are united to carry war amongſt twenty-ſix millions
" of men, arranged behind a hundred of the ſtrongeſt for-
" treſſes in the world. If we are deceived, and Frenchmen
" are not fond of freedom, but will fight for deſpotiſm—
" ſomething may be done; for then France falls by the
" power of France; but if united but tolerably, the attack
" will be full of difficulties in a country where every man,
" woman and child is an enemy, that fights for freedom.

" But ſuppoſe this idea erroneous—ſuppoſe an impreſſion
" made—and that the German banners were flying at Paris:
" Where is the ſecurity of the reſt of Europe? Is the di-
" viſion of Poland forgotten? Is an unforeſeen union of

" two

" two or three great powers to protrude through Europe a " predominancy dangerous to all? Gentlemen who in- " dulge their wiſhes for a counter-revolution in France do " not, perhaps, wiſh to ſee the Pruſſian colours at the " Tower nor the Auſtrian at Amſterdam. Yet ſucceſs to " the cauſe might plant them there. Should real danger " ariſe to France, which I hold to be problematical, it is the " buſineſs and direct intereſt of her neighbours to ſupport " her.

" The revolution and anti-revolution parties of England " have exhauſted themſelves on the French queſtion—But " there can be none if that people ſhould be in danger; we " hold at preſent the balance of the world; and have but to " ſpeak and it is ſecure." *Young's Travels*, c. xxii. 1ſt. edit.

Nobody could miſunderſtand ſuch language; it went much farther than the words of the ſong which were, " Should France be ſubdued Europe's Liberty ends:" But here you ſee the colours of Pruſſia waving on the Tower of London! And yet was Arthur Young proſecuted? No—he was rewarded with a place and penſion of three hundred pounds a-year. His book is to this day ſold in every bookſeller's ſhop in the kingdom, even during the preſent war; and no proſecution is inſtituted againſt the venders!

Mr. Vaughan contended that to expreſs a diſapprobation of the war neither was nor could be conſtrued, into a Libel. That the preſent war had been ruinous and calamitous to an unprecedented degree, was a fact nobody would attempt to deny: The ſucceſſes of the French, during the laſt

laſt campaign, had been dreadful indeed: They were now overwhelming Holland with their forces; and, perhaps, at this very moment were already in poſſeſſion of Amſterdam *. He would, indeed, gladly hope that we had little to dread from an invaſion here, and that the wooden walls of Old England always would be as they always had been—impregnable bulwarks againſt the power of foreign enemies. But yet did not every claſs of men feel the weight and misfortunes of the war preſſing upon them on every ſide? Had not the independent Inhabitants of the City of London already petitioned his Majeſty againſt the war and for the reſtoration of peace? Was not a ſimilar petition at that very time in agitation at Carliſle? Were not others of the principal towns in the kingdom preparing petitions of a ſimilar nature? And who would charge theſe great and reſpectable bodies of men with being malicious, ſeditious and evil-diſpoſed perſons? The people had a right to expreſs their diſapprobation of any war, and a right to petition and pray for the bleſſings of peace. With reſpect to the popular Societies and Aſſociations for a Reform in Parliament, Mr. Vaughan ſaid, "So far from the allegation of his learned friend (Mr. Tooker) being true, that there had never been any ſuch Aſſociations

---

* This was before the news arrived of the fate of Amſterdam.

ations in the country before, there had been many ſuch Aſſociations and, if he were not greatly miſtaken, the learned Gentleman himſelf had been a member of one, the Yorkſhire Aſſociation, which had been compoſed of the firſt and moſt reſpectable Gentlemen in the county, both in point of property and abilities. Such Aſſociations collectively, and the members individually, had always been calumniated and pointed out as diſaffected and ſeditious: He himſelf had been much injured for being a friend of rational Freedom and Conſtitutional Reform. But the true Friends of Reform were in reality the beſt Friends of their Country.

The Jury, continued Mr. Vaughan, have heard the evidence which has this day been brought forward in ſupport of the proſecution, and ſurely, upon ſuch evidence, the liberty of no Britiſh ſubject was ever before endangered. The principal witneſs who ſtands before you is a wretch, who, by his own confeſſion, has been a vagabond and a vagrant the greateſt part of his life; a creature who, the moment he found himſelf arreſted by a conſtable, to ſave himſelf, inſtantly offered to turn informer and accuſe my unfortunate client, who ought not to have been brought here upon ſuch ſcandalous evidence.—Upon the trial of Lord W. Ruſſel, when Mr. Jefferies, afterwards the infamous Judge Jefferies, was the Counſel for the Crown againſt him, he told

the

the Court "that he had not raked together the filth and ſcum of Gaols and Houſes of Correction to give evidence againſt the priſoner." But what ſort of evidence have we here?—an evidence truly worthy of ſuch a proſecution—A proſecution, which, like a ricketty child bolſtered up with pillows, and flannels and rags, was brought forward under circumſtances the moſt paltry, and ſupported by evidence the moſt miſerable that ever appeared in a Court of Juſtice. It was the laſt ſhift of men who, with eyes of the moſt malignant jealouſy, had watched every ſtep of his client, had pryed into all his actions by day and by night and one of whom had declared, in a public company, that he read the Iris, a newſpaper of which the priſoner is the Editor, SIX TIMES *in one day* to find a Libel if poſſible in it! But no ſuch Libel was to be found. His client he knew to be a perſon of the moſt moderate principles, violent in no reſpect, but endeavouring, as far as in him lay, to ſerve his country in that line of life wherein his deſtiny had placed him. But his enemies were not to be put off; he muſt be proſecuted; and ſince they had nothing elſe to charge againſt him, this pitiful ſong muſt be his crime, and it muſt be a libel upon the preſent war, *becauſe it was written before the war was dreamed of.* But let the Jury, for a moment, conſider the circumſtances attending the publication and diſcover, if they can, any criminal intention—

tention—for there, there only lies the guilt: Nothing but the intention could conſtitute the guilt of any action: If a perſon were walking upon the roof of a houſe, and a tile were to ſlip from under his foot and, falling down, kill another man who was walking in the ſtreet, would the perſon on the roof be a murderer? No; and why not? Becauſe it was an accident, the conſequence of which he could not poſſibly foreſee: 'twas true a perſon had been killed by it, but unleſs he had intentionally thrown down the tile with a premeditated deſign to kill that perſon he was innocent of his blood. Did his client foreſee, or could any man in his ſenſes ever dream of the mighty injury that was charged in the indictment as intended to have been done by the publication of ſix quires of a ſong, printed long before the preſent war was ever thought of? My client was applied to by this Jordan to print ſix quires of theſe ſongs, which he agreed to print for *eighteenpence!*—Eighteenpence! Sixpenny worth of paper, ſixpenny worth of printing and ſixpenny worth of profit!—Good God! will any man believe, in times like the preſent, when proſecutions are ſo frequent and the puniſhment for libels ſo ſevere, that a man, not out of his ſenſes, would run his neck into ſuch a nooſe for ſixpence! would hazard his liberty by publiſhing any thing that he conceived might be tortured into ſedition for ſuch a pitiful reward!—Surely no! Where

then

then is the intention ſpecified in the indictment? He prints them for a vagabond he never ſaw in his life before! No converſation paſſes between them relative to the contents of the ſong, or the government or the war! No precaution is taken to prevent a diſcovery of the printer! My client neither read the ſong when Jordan offered it to him nor, as any body that takes the pains to look at it will ſee, did he even correct the preſs before it was printed! I will not throw a doubt upon ſo clear a caſe; I will not produce witneſſes to negative an intention of guilt which has not even been attempted to be proved by the proſecutors.—I have moſt clearly demonſtrated the abſurdity, as well as the injuſtice of the charge brought againſt the accuſed.

Let the Gentlemen of the Jury conſider all theſe circumſtances; let them lay their hands upon their hearts and pronounce my client "Not Guilty." He ought to be acquitted; and were I upon the Jury I ſhould think it my duty to acquit him: For there neither does appear nor did there exiſt in the breaſt of my client, any *ſeditious intention.* I place him with confidence in your hands, not doubting but you will do him juſtice by bringing in a favourable Verdict, which ſhall ſend him home rejoicing, to bleſs that Conſtitution which, through an independent Jury, ſhall have vindicated his reputation and ſecured his liberty.

After

After Mr. Vaughan ſat down, a converſation enſued, whether Mr. Tooker ought or ought not to reply, as no witneſſes were produced by the defendant, when it was determined by the Court that Mr. Tooker was not entitled to the privilege of a reply.

Mr. M. A. Taylor then ſummed up the evidence, and delivered a charge to the Jury. He obſerved that, though the Counſel for the defendant had denied that any part of the words libelled were falſe and had, with great ingenuity, attempted to prove them true, it was not neceſſary to conſtitute a libel that the libel ſhould contain a falſehood; for, in many caſes, truth was equally libellous. For example, if one perſon becomes acquainted with any exceptionable part of the character of his neighbour, and publiſhes it to the injury of that neighbour, it is a libel notwithſtanding it may be true. It had been obſerved that the ſong, for which the defendant ſtood indicted, had been written, printed and publiſhed long before the war began: This, however, was nothing to the purpoſe; that which was perfectly innocent in 1789 might be groſsly ſeditious in 1794; and though this ſong was no libel when firſt publiſhed, yet it might be a libel, for all that, at the time the defendant had publiſhed it: And though the very ſongs in queſtion had been printed before the commencement of the

war

war and locked up in a cloſet, if they were brought out after the war began they might be libellous; but of this the Jury were to be the judges. Many parts of the Scriptures themſelves, if publiſhed now, might be libellous: For inſtance, the expreſſion, "*Fly to your tents, O Iſrael,*" if it could be proved that by Iſrael was meant England, would be a libel and, in like manner, many other paſſages of a ſimilar nature. The Counſel for the defendant had laboured hard to prove how miſerable the people of France were under the antient deſpotiſm, and how much better, comparatively ſpeaking, they were under the Revolutionary and Republican Syſtem. The learned Counſel had read ſeveral Extracts from the Travels of Arthur Young, to confirm his own ſentiments reſpecting the ſituation of France under her Monarchs, and alſo a paſſage which held forth language ſimilar to the words for which the defendant ſtood indicted. But thoſe Travels were publiſhed by Mr. Young before the war broke out and were, therefore, not libellous.*—

He

---

* It is ſingular that Mr. Taylor here uſes a mode of argument with reſpect to Mr. Young's Travels which, juſt before, he had reprobated in the defendant's Counſel when applied to the publication of the Song. The Song, as well as the Travels, was *originally* publiſhed before the war broke out; and, if the Song has been republiſhed ſince the commencement of the war, it is equally true that Mr. Young's book continues to this day to be ſold, with entire impunity, in every bookſeller's ſhop in the kingdom.

He acknowledged that many of the French Kings had been tyrants and as cruel, perhaps, as the defendant's counſel had repreſented them: And when France ſhook off the yoke and eſtabliſhed a free Government and limited Monarchy, many of the beſt friends and greateſt men even of this country rejoiced at the event, he himſelf amongſt the reſt. But when the French, not content with rational Liberty, barbarouſly murdered one of the beſt and mildeſt Princes that ever ſat upon the throne of that kingdom, and filled not only their own country with anarchy and ruin, but attempted to extend their conqueſts and interfere with the governments of other countries, it was time for the reſt of the powers of Europe to unite to oppoſe and cruſh ſuch a monſtrous and bloody ſyſtem.—But with reſpect to the caſe before them, it was the duty of the Jury to conſider all the circumſtances attending the publication of the ſong, as well as the contents, before they could judge whether it were libellous or no. Every doubt muſt be favourable to the defendant, and it was certainly a circumſtance greatly in his favour that he had ſold theſe ſongs to a ſtranger, a perſon of no character, whom he had never ſeen in his life before. The Jury were to conſider the intention only; for neither the printing nor the publication, if they were ever ſo clearly proved, could conſtitute the guilt or innocence of the defendant, but the deſign and intention alone.

The

The Jury, after being locked up nearly a whole hour, returned with a verdict, "*Guilty of Printing and Publiſhing*;" which the Court refuſing to accept, they again retired for fifty minutes longer, and then brought in their verdict—

"GUILTY."

Mr. Vaughan immediately roſe to addreſs the Court upon an Arreſt of Judgment. He contended that ſentence could not be paſſed upon his client on the preſent charge. The indictment ſtated the libel to be "of and concerning the war and his Majeſty's conduct thereof;" the words libelled,

"Europe's fate on the conteſt's DECISION depends,
"Moſt important its ISSUE will be,
"For ſhould France be ſubdued, Europe's Liberty ends,
"If ſhe triumphs the World will be free,"

Bore no alluſion whatever either to the war or his Majeſty's conduct thereof, but were a mere ſpeculation of what might take place at the end of the war. Every thing had a beginning, a middle and an end: The beginning of a war was when hoſtilities commence; the conduct of a war was the carrying on of ſuch war; the end of a war, the *iſſue*, the *deciſion*, as expreſſed in the verſe, was ſomething entirely diſtinct from either the war or the conduct of it. The preſent war was ſtill carrying on; the iſſue had not yet taken place; but

till it did take place no man living could ſay that the words charged in the indictment were libellous, becauſe they related not in the remoteſt degree to any thing at preſent in exiſtence, but were merely a conjecture that, if at the end of the war certain events ſhould take place, ſuch and ſuch effects would follow. A ſpeculation or conjecture on the event of a war was *telum imbelle* (a harmleſs weapon.) For it could be no libel on a war which did not exiſt, nor on the conduct of it, nor on the Government who were to conduct it. When France was ſubdued or when ſhe triumphed this country might be at peace with her. The Jury having found the inuendo, " in the courſe of," was no anſwer but another inconſiſtency on the record. To ſpeak of the courſe of a thing at the end of it was abſurd, and no man could write a libel on the preſent conduct of a non-entity.

Mr. Vaughan purſued and illuſtrated theſe arguments in a long and moſt ingenious ſpeech, full of logical reaſonings and legal demonſtrations, and illumined with frequent ſallies of the moſt brilliant wit. It has been found impracticable, in the inconvenient circumſtances in which this pamphlet is publiſhed, to procure ſo exact an account as was intended to have been laid before the public of the very diſtinguiſhed manner in which the learned Counſel here diſplayed the ſubtlety of his genius and the extent of his profeſſional abilities. A ſpeech on arreſt of judgment,

ment, as it neceſſarily relates to legal niceties, is commonly dry and unintereſting. But it was ſo conducted by Mr. Vaughan as forcibly to command the attention and to impreſs the feelings of the generality, at leaſt, of the audience.

Mr Tooker roſe in reply. He paid a tribute of reſpect to the abilities of his learned opponent; he ſaid he did not pretend to be a ſpecial pleader nor to follow Mr. Vaughan through the long and intricate chain of logical arguments which he had advanced. But, he hoped, he might lay claim to the poſſeſſion of common ſenſe. He profeſſed he could not underſtand the ingenious diſtinction which his learned friend attempted to make between the conduct of a war and the end of it. What had the preſent proſecution to do with the end of the war? The verſe charged in the indictment, he maintained, was a moſt groſs and violent libel upon the war and the conduct of it: for the word *Deciſion* in the firſt line and *Iſſue* in the ſecond, he ſuppoſed, were merely inſerted to fill up the ſyllables of the lines. Whatever was a libel upon the war muſt be alſo a libel upon the conduct of that war; the conduct of the war could not be ſeparated from the war itſelf. England, he ſaid, was a part of Europe, and if the fate of Europe depended upon the war as expreſſed in the libel, the fate of England alſo depended upon it. We were at war with France, and our buſineſs was to conquer France if we could; otherwiſe France would conquer us: there-

fore, whoever ſaid, as the libel ſays, that "if France be ſubdued Europe's Liberty ends," meant that if we ſubdued France there would be an end put to the Liberty of Europe and this Country alſo. From this conſideration he inſiſted upon it, that the words charged in the indictment did refer to both the war and the conduct of it, and were a libel upon the one as well as the other.

Mr. Buck ſeconded Mr. Tooker, and complained that he was equally at a loſs to underſtand how the learned Counſel could diſtinguiſh between the conduct and the concluſion of the war: His arguments were principally an enlargement upon thoſe of Mr. Tooker.

Mr. Hill made the ſame complaint of not being able to underſtand the drift of his learned Friend (Mr. Vaughan) and repeated the ſame arguments that had been produced by Mr. Tooker and Mr. Buck.

Mr. Vaughan obſerved, in reply, that he was ſorry he had expreſſed himſelf ſo unfortunately as not to be underſtood by any one of the learned Gentlemen on the other ſide. Though the nature of his argument had required him to inſiſt on ſome of the niceties of legal diſcrimination and to enlarge on points of a logical and, in ſome reſpects, abſtruſe nature, little did he imagine that he had been able to proceed out of the depth of his ingenious opponents. And he muſt expreſs his ſurpriſe that they had declared themſelves unable to follow

follow him in a courſe of arguments which ſtruck upon his own mind with ſuch peculiar force, and which he had flattered himſelf with the hope of having clearly and fully explained to the whole Court. If the arguments he had had the honour to ſubmit to the Bench had been capable of being ſatisfactorily replied to, he was ſure they would have been expoſed and refuted by his learned antagoniſts; and, ſince not even an attempt of this kind had been made, he muſt conclude that they were abſolutely deciſive and unanſwerable. The learned Gentlemen had all made a variety of obſervations. But not one of them had uttered a ſyllable in point againſt his motion and objection. They had all been contending as if they had been addreſſing the Jury and not the Bench. They confounded the *eſſe* with the *poſſe*, a *reality* with a *poſſibility*, the conduct of a war now carrying on with the probable iſſue of that war, of which no man could ſpeak with certainty till it arrived.—The leading Counſel for the proſecution had made upon this ſubject a declaration not a little extraordinary, but he had wiſely avoided bringing forwards any thing like argument in its ſupport.—He had maintained that whatever was a libel upon the war muſt alſo be a libel upon the conduct of that war, and that the conduct of the war could not be ſeparated from the war itſelf. This was a poſition which it was much eaſier to advance than to defend. It was a poſition which his learned

antagoniſt

antagoniſt had aſſumed at an unguarded moment, and it muſt put his utmoſt ingenuity to the ſtretch if he were determined to entrench himſelf on ſuch ground. What! is it not poſſible that a war, founded originally on principles of juſtice, may be fooliſhly and even criminally conducted? And, on the contrary, may not a war, unjuſt in its origin, be ſkilfully ſupported and led to a ſucceſsful termination? Is not the hiſtory of every nation upon earth full of ſuch examples as theſe? Is not our own hiſtory, as well as that of other nations, pregnant with them? Whatever any man may think of the propriety, the juſtice, the abſolute neceſſity of the war in which this nation is now engaged, will the moſt ſtrenuous advocate for it maintain that no errors have been committed in carrying it on? Are the miniſters of this country abſolutely infallible, and is it impoſſible to point out any errors which they may have committed in the management of the war without incurring the guilt of libelling the war itſelf and the conduct of his Majeſty in originally entering into it?—Mr. Vaughan here referred to the retreat of the Britiſh troops from Dunkirk, and to ſeveral of the leading events which had taken place in the courſe of laſt campaign. He alledged that nothing was more common than to cenſure errors, and even *imagined* errors, in the conduct of any war in which this country might be engaged. And he truſted in God the time would

would never arrive when free-born Britons ſhould no longer be permitted to expreſs their ſentiments in this way! But, if it were ever ſo criminal in England to find fault with the manner in which a war was carried on, it was a crime not to be diſcovered in the words libelled in the indictment. The words of the verſe moſt unequivocally alluded to the end of the war and to the end only, not to the *conteſt* but to the *conteſts' deciſion*, not to the conduct of the war but to the *iſſue*. If the words had been intended as a reflection on the conduct of the war, would they not have hinted at the conductors—and who were the conductors? His Majeſty's Miniſters. But where was there the remoteſt alluſion to thoſe Miniſters, or to any operation of their's in the courſe of the war?—There was none at all. Nobody was alluded to but the German Deſpots and the King of Pruſſia, and no operation but the campaign of the Duke of Brunſwick, which happened before the war between England and France. He muſt, therefore, inſiſt that the very thing charged in the indictment was not to be found in the ſong and, conſequently, the indictment could not be valid. The whole, as he contended at firſt, and as he ſhould now repeat, was a mere ſpeculation upon what had not yet taken place; and, till it did take place, no man could truly and juſtly call it a libel either upon the conduct of the war, to which it did not at all refer, or upon the iſſue, to which and to which alone it did refer. Mr. Vaughan

ſubmitted

ſubmitted it to the conſideration of the Court, whether it was right, whether it was juſtifiable to proceed to paſs ſentence upon his client on ſuch an indictment.

Mr. Taylor acknowledged the ingenuity with which the learned Counſel had endeavoured to prove that the indictment was not valid, and that the Court ought not to proceed to paſs ſentence in conſequence of the verdict of the Jury. He ſaid he was not a ſpecial pleader, and would not pretend to follow Mr. Vaughan through the courſe of logical and refined arguments which he had produced. But it ſtruck him that, if the Court were to agree to the motion for arreſt of judgment on the part of the defendant, no further proceedings could be had againſt him, and a perſon, adjudged by a Jury of his countrymen to have been guilty of a libel, would eſcape juſtice through a mere informality in the indictment: Whereas, if the Court proceeded to paſs ſentence, the defendant, provided he were ſo adviſed, might move in another Court for a writ of error. He therefore thought judgment ought to be pronounced.

The Court overruled Mr. Vaughan's motion, and ſentenced the Defendant *to ſuffer three months impriſonment in the Caſtle of York and to pay a fine of twenty pounds* — The Defendant was immediately taken into cuſtody, and the next day was conveyed by a Meſſenger to York.

During this important Trial, which laſted about nine hours, the Seſſions-hall was exceedingly crouded.

LIST OF THE GRAND JURY

By whom the Indictment againſt James Montgomery was found at the Michaelmas Seſſions, held at Sheffield, 1794.

Henry Tudor, of Sheffield
William Birks, Ditto
Samuel Deakin, Ditto
Zephaniah Fiſher, of Attercliffe
Richard Ramſay, Ditto
William Shore, of Eccleſall Bierlow
George Trippitt, Ditto
John Paſhley, of Bradfield
John Dickenſon, Ditto
John Fielding, of Ecclesfield
William Greaves, Ditto
Edward Moor, Ditto
Henry Hawkſworth, of Handſworth
John Newbould, Ditto

DONCASTER SESSIONS,

January 22, 1795.

JUSTICES.

M. A. Taylor, Eſq. M. P.

R. A. Athorpe, Eſq.
B. Frank, Eſq.
Rev. J. Wilkinſon,
Rev. J. Stovin.

JURY.

John Stones
William Spencer
William Herring
John Dyſon
James Thomſon
Robert Thomſon
Joſeph Hanks
Joſeph Shillito
Jonathan Reynolds
Thomas Fox
John Kinder
Robert Smith

COUNSEL.

For the Crown.
Mr. Tooker
Mr. Buck
Mr. Hill

For the Defendant.
Mr. Vaughan
Mr. Markham

SOLICITORS.

Mr. Brookfield.
Mr. Shearwood.